

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
CHRISTOPHER G. JOSTES and ) CASE NO. 06-62643 JPK  
ROSE M. JOSTES, ) Chapter 13  
 )  
Debtors. )

ORDER DENYING OBJECTION TO CONFIRMATION OF DEBTORS' PLAN

On February 16, 2007, Heights Finance Corporation, by counsel, filed an objection to confirmation of the debtors' amended Chapter 13 plan filed on February 6, 2007. This contested matter was originally scheduled for preliminary pre-trial conference on March 26, 2007, pursuant to the Court's order entered on March 1, 2007. At the hearing held on March 26 – attended solely by counsel for the debtors and for the Chapter 13 Trustee – the hearing was continued to April 30, 2007. That hearing was removed from the Court's calendar, as stated in docket record entry #39 made on May 2, 2007, as a result of report by the parties in advance of the hearing that an agreed immaterial modification would be filed within 30 days to resolve the objection. Docket record entry #39 concludes with the following: "It is Ordered that either Attorney Galanos or Attorney Willoughby shall file an Agreed Immaterial Modification, approved by the Trustee in 30 days." Subsequently, over the course of the next number of months, the Court's Judicial Assistant Susan M. Harrison attempted to elicit the filing of the agreed immaterial modification, and she has been unsuccessful in doing so.

In the interim, on May 26, 2007, the debtors, by counsel, filed an objection to claim #5 of Heights Finance. The basis for the objection was that the claim, docketed as claim #5, was filed as a secured claim, and the basis of the objection was that the debtors' plan surrenders the property subject to the claim to the creditor. While surrender may have been the intent of the agreed immaterial modification required to be filed, the debtors' amended plan does not surrender the property subject to claim #5 and, as stated in the objection of Heights Finance Corporation, the plan does not provide for any treatment of the claim in relation to a 1997 Ford Explorer.

However, based upon full review of the record in this case, including the fact that the amended plan does not provide in any manner for the claim of Heights Finance, the Court construes the objection to claim #5 to state that debtors relinquished possession and interest in the subject vehicle to Heights Finance Corporation in a manner which causes them to deem that vehicle to no longer constitute property of their Chapter 13 bankruptcy estate. The Court sustained the objection of the debtors to claim #5 by order entered on July 3, 2007, and thus that claim is no longer before the Court as a barrier to confirmation of the debtors' amended Chapter 13 plan.

Confirmation of the amended plan has been held up now for nearly a year, awaiting the submission of an agreed immaterial modification required by the Court's docket order entered on May 2, 2007. Heights Finance Corporation no longer has a claim which would sustain that objection; Attorney Willoughby has failed to pursue that objection in the manner required by the Court. The filing of the objection to confirmation of the amended plan gave rise to a contested matter under Fed.R.Bankr.P. 9014, a contested matter in which Heights Finance Corporation was the initiator, and with respect to which Heights Finance Corporation has the burden of prosecution. Given that it no longer has a sustainable claim, there is no basis for the objection to confirmation of the amended plan asserted by Heights Finance Corporation. That fact, coupled with the failure of the creditor to pursue in any manner the contested matter, gives rise to the Court's ability to dismiss this contested matter without further notice or hearing; *Beshear v. Weincapfel*, 474 F.2d 127, 133 (7<sup>th</sup> Cir. 1973).

IT IS ORDERED that the objection to confirmation of the debtors' amended plan filed by Heights Finance Corporation on February 16, 2007 is dismissed/denied.

IT IS FURTHER ORDERED that a status conference will be held on **April 28, 2008, at 3:00 P.M.** to determine whether or not the debtors' amended Chapter 13 plan can be confirmed.

Dated at Hammond, Indiana on April 14, 2008.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:

Debtors, Attorney for Debtors, Trustee, US Trustee, Attorney for Creditor